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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 MARIO LEDESMA, an individual,
12 RUTH LEDESMA, an individual, RUTH
13 FLORES, an individual,

14 Plaintiffs,

15 vs.

16 FCM CORPORATION, WILMINGTON
17 FINANCE, WILSHIRE CREDIT CORP.,
18 and T.D. SERVICE COMPANY,

19 Defendants.

CASE NO. 09 CV 1837 JM (AJB)

**ORDER GRANTING
DEFENDANT WILSHIRE
CREDIT CORPORATION'S
MOTION TO DISMISS**

Doc. No. 14

20 Plaintiffs Mario Ledesma, Ruth Ledesma, and Ruth Flores (collectively, "Plaintiffs")
21 brought this action for claims arising from a residential mortgage transaction. (Doc. No. 4).
22 Defendant Wilshire Credit Corporation ("Wilshire") moves to dismiss the complaint for failure
23 to state a claim upon which relief can be granted or, in the alternative, for a more definite
24 statement. (Doc. No. 14).

25 The court finds this matter appropriate for disposition without oral argument. *See*
26 CivLR 7.1(d)(1). Plaintiffs have not filed an opposition to the motion, which may "constitute
27 consent to the granting of the motion." CivLR 7.1(f)(3)(c). Nonetheless, the court addresses
28 the merits of Wilshire's motion to dismiss.

For the following reasons, the court hereby GRANTS Wilshire's motion to dismiss.

1 **I. BACKGROUND**

2 On or about October 13, 2006, Plaintiffs purchased a home by borrowing money from
3 Defendant FCM Corporation. (Doc. No. 4, First Amended Complaint, hereinafter “FAC,” ¶ 9).
4 Wilshire is the current servicing company for Plaintiffs’ loan. (FAC ¶ 11). At some point,
5 Plaintiffs began having difficulty paying the mortgage on their home. (FAC ¶ 22). Therefore,
6 Defendant T.D. Service Company has executed a notice of trustee’s sale against Plaintiffs’
7 home. (FAC ¶ 23).

8 **II. LEGAL STANDARD**

9 A motion to dismiss under Rule 12(b)(6) challenges the legal sufficiency of the
10 pleadings. *De La Cruz v. Tormey*, 582 F.2d 45, 48 (9th Cir. 1978). In evaluating the motion,
11 the court must construe the pleadings in the light most favorable to the plaintiff, accepting as
12 true all material allegations in the complaint and any reasonable inferences drawn therefrom.
13 *See, e.g., Broam v. Bogan*, 320 F.3d 1023, 1028 (9th Cir. 2003). While Rule 12(b)(6)
14 dismissal is proper only in “extraordinary” cases, the complaint’s “factual allegations must be
15 enough to raise a right to relief above the speculative level.” *United States v. Redwood City*,
16 640 F.2d 963, 966 (9th Cir. 1981); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
17 The court should grant 12(b)(6) relief only if the complaint lacks either a “cognizable legal
18 theory” or facts sufficient to support a cognizable legal theory. *Balistreri v. Pacifica Police*
19 *Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

20 “A party may move for a more definite statement of a pleading to which a responsive
21 pleading is allowed but which is so vague or ambiguous that the party cannot reasonably
22 prepare a response.” Fed. R. Civ. P. 12(e).

23 **III. DISCUSSION**

24 A number of Plaintiffs’ claims appear to be time barred. Equal Credit Opportunity Act
25 claims—such as Plaintiffs’ seventh claim—are subject to a two-year statute of limitations. 15
26 U.S.C. § 1691e(f). Plaintiffs’ twelfth claim for violation of the Truth in Lending Act is subject
27 to a one-year statute of limitations for damages. 15 U.S.C. § 1640(e). Plaintiffs’ thirteenth
28 claim for violation of the Real Estate Settlement Procedures Act is also subject to a one-year

1 statute of limitations. 12 U.S.C. § 2614. Plaintiffs' claims accrued in October 2006 but
2 Plaintiffs did not file suit until August 2009. Therefore, these claims are dismissed as time-
3 barred.

4 Many of Plaintiffs' claims rely on conduct alleged to have occurred during loan
5 origination. As merely the loan servicer, Wilshire did not negotiate the terms of the loan with
6 Plaintiffs. Therefore, Plaintiffs' first (intentional misrepresentation), second (breach of
7 fiduciary duty), third (constructive fraud), fourth (breach of the covenant of good faith and fair
8 dealing), eighth (violation of Cal. Fin. Code § 4970 *et seq.*), ninth (negligence), fourteenth
9 (Fair Credit Reporting Act), and nineteenth (Cal. Civ. Code § 1632(b)) claims are dismissed.


10 Furthermore, all of Plaintiffs' claims—including those already dismissed—are too
11 vague or ambiguous. Plaintiffs fail to specifically identify which claims apply to which
12 defendants. Instead, Plaintiffs seem to allege all claims against all defendants, regardless of
13 each defendant's role in the mortgage transaction. Without greater detail, it is unreasonably
14 difficult for the defendants to prepare responsive pleadings. Therefore, Plaintiffs' claims are
15 dismissed against Wilshire.

16 **IV. CONCLUSION**

17 For the foregoing reasons, the court hereby GRANTS Defendant Wilshire Credit
18 Corporation's motion to dismiss with leave to amend. Plaintiffs shall file a second amended
19 complaint that addresses the deficiencies identified in this order no later than March 19, 2010.

20 **IT IS SO ORDERED.**

21 DATED: March 3, 2010

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23 Hon. Jeffrey T. Miller
24 United States District Judge
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